

**COMMUNICATIONS
ALLIANCE LTD**



INDUSTRY GUIDELINE

G517:2014

MONITORING OF VOICE COMMUNICATIONS FOR
NETWORK OPERATION AND MAINTENANCE

G517:2014 Monitoring of Voice Communications for Network Operation and Maintenance Guideline

First published as ACIF G517:1998
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This edition as G517:2014

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INTRODUCTORY STATEMENT

The **Monitoring of Voice Communications for Network Operation and Maintenance** Guideline (G517:2014) replaces the **Monitoring of Voice Communications for Network Operation and Maintenance** Guideline (G517:2004).

The purpose of the changes are to reflect amendments to the:

- *Telecommunications (Interception and Access) Act 1979*;
- *Privacy Act 1988*; and
- various State and Territory listening devices/surveillance legislation.

The **Monitoring of Voice Communications for Network Operation and Maintenance** Guideline (G517:2014) is designed to:

- set down procedures that may be followed where it is necessary to Monitor Voice Communications for the purpose of installing, operating or maintaining a Telecommunications Network; and
- assist both industry and consumers in their understanding of the application of relevant legislation.

James Duck
Chair
Participant Monitoring Revision Working Committee

JUNE 2014

TABLE OF CONTENTS

1	GENERAL	2
	1.1 Introduction	2
	1.2 Scope	3
	1.3 Objectives	4
	1.4 Guideline review	4
2	ACRONYMS, DEFINITIONS AND INTERPRETATIONS	5
	2.1 Acronyms	5
	2.2 Definitions	5
	2.3 Interpretations	7
3	GUIDELINES FOR MONITORING	8
	3.1 Conduct of Monitoring	8
	3.2 Organisation to develop internal authorisation procedures	8
	3.3 Listening to Voice Communications	8
	3.4 Duration of Listening to Voice Communications	8
	3.5 Voice Recording	9
	3.6 Customer consent for Recording	9
	3.7 Use or disclosure of information	10
	3.8 Retention and disposal of recordings	11
	3.9 Access controls and physical security	11
4	REFERENCES	12
	APPENDIX	13
A	PROCEDURES FOR MONITORING OF VOICE COMMUNICATIONS FOR THE PURPOSE OF INSTALLATION, OPERATION OR MAINTENANCE OF A NETWORK	13
	PARTICIPANTS	14

1 GENERAL

1.1 Introduction

- 1.1.1 This Guideline was first published in July 1998. The Guideline was revised by the Australian Communications Industry Forum in 2004 through a Working Committee comprised of representatives from the telecommunications industry, Government, privacy advocates and consumer groups following the amendments to the *Privacy Act 1988 (Cth)* (PA).
- 1.1.2 The Guideline has been updated following the amendments to the *Telecommunications (Interception and Access) Act 1979 (Cth)*(TIAA) and various State and Territory listening devices/surveillance legislation since 2004, and further amendments to the PA which took effect in March 2014.
- 1.1.3 The development of the Guideline has been facilitated by Communications Alliance through a Working Committee comprised of representatives from the telecommunications industry, Government, privacy advocates and consumer groups.
- 1.1.4 The Guideline should be read in the context of other relevant codes, guidelines and documents including the **Participant Monitoring of Voice Communications** Industry Guideline (G516:2014).
- 1.1.5 The Guideline should be read in conjunction with related legislation, including the:
- (a) *Telecommunications Act 1997 (Cth)* (TA);
 - (b) *Privacy Act 1988*; and
 - (c) *Telecommunications (Interception and Access) Act 1979*;
 - (d) *Criminal Code Act 1995 (Cth)*; and
 - (e) State and Territory legislation on listening devices/surveillance.
- 1.1.6 Compliance with the Guideline does not guarantee compliance with any legislation.
- 1.1.7 The Guideline is not a substitute for legal advice.
- 1.1.8 Statements in boxed text are a guide to interpretation only.

1.2 Scope

- 1.2.1 The Guideline applies to the Carriers and Carriage Service Providers section of the telecommunications industry under section 110 of the TA.
- 1.2.2 It deals with the following telecommunications activities as defined in section 109 of the TA:
- (a) carrying on business as a Carrier; or
 - (b) carrying on business activities as a Carriage Service Provider; or
 - (c) supplying Goods or Service(s) for use in connection with the supply of a Listed Carriage Service.
- 1.2.3 The Guideline does not cover:
- (a) Interception of a Communication or Accessing a Stored Communication carried out under a telecommunications Interception warrant or Stored Communication warrant;
 - (b) the Interception of a Communication or Accessing a Stored Communication in emergency circumstances in accordance with exceptions specified in the TIAA;

NOTE: The TIAA contains exceptions that permit Interception of a Communication or Accessing a Stored Communication by a Carrier (see clause 1.3.2 for additional information).

For example, a Carrier may need to capture (i.e. store) the traffic from a communications link or device as part of installing, maintaining or operating a service e.g. in order to diagnose what might be causing a network fault condition.

- (c) participant Monitoring (refer to G516);
- (d) the recording or use of telecommunications information related to but not part of the contents or substance of a Communication. Examples of such information may include the calling and called numbers, call time and duration, or call routing;
- (e) the monitoring by or on behalf of employers in the workplace of voice communications via telecommunications infrastructure, which may be subject to separate workplace surveillance legislation; or
- (f) Interception of a Communication or Accessing a Stored Communication for the identifying or tracing of any person who has contravened, or is suspected of having contravened or being likely to contravene, a provision of Part 10.6 of the *Criminal Code Act 1995 (Cth)*, which contains offences relating to telecommunications.

1.3 Objectives

- 1.3.1 This Guideline was developed to assist Carriers and Carriage Service Providers (CSPs) by setting down procedures that may be followed where it is necessary to Monitor Voice Communications for the purpose of installing, operating or maintaining a Telecommunications Network.
- 1.3.2 The procedures in this Guideline apply where the Monitoring activity falls within the exceptions to the general prohibition against:
- (a) Interception of a Communication in subsections 7(2)(a)(i) and 7(2)(a)(ii) and section 7(2)(aa); and
 - (b) Accessing a Stored Communication in subsections 108(2)(d)(i) and (ii) and section 108(2)(e)
- of the TIAA, which is explained in the next section of this document.
- 1.3.3 The procedures aim to ensure such Monitoring complies with or exceeds privacy requirements under the TA, TIAA and PA.
- 1.3.4 The Guideline seeks to provide guidance on the practical application of interception and privacy legislation to the Carriers and CSPs' Monitoring of Voice Communications for network operation and maintenance.
- 1.3.5 The Guideline has been written in a form which can be utilised by both Carriers and CSPs in the telecommunications industry. It is intended that the Guideline assists both industry and consumers in their understanding of the application of relevant legislation.

1.4 Guideline review

The Guideline will be reviewed after 5 years, or earlier in the event of significant developments that affect the Guideline.

2 ACRONYMS, DEFINITIONS AND INTERPRETATIONS

2.1 Acronyms

For the purposes of the Guideline:

CSP

means Carriage Service Provider.

PA

means *Privacy Act 1988 (Cth)*.

TA

means *Telecommunications Act 1997 (Cth)*.

TIAA

means *Telecommunications (Interception and Access) Act 1979 (Cth)*.

2.2 Definitions

For the purposes of the Guideline:

Accessing a Stored Communication

has the meaning given by section 6AA of the TIAA.

Australian Privacy Principle

has the meaning given by Schedule 1 of the PA.

Carriage Service Provider

has the meaning given by section 87 of the TA.

Carrier

has the meaning given by section 7 of the TA.

Interception of a Communication

has the meaning given by the TIAA.

<p><i>NOTE: This means the Listening to or Recording of a Voice Communications, by any means, during the course of its passage over a Telecommunications System, without knowledge of the parties to the communication.</i></p>

Listening

means listening to Voice Communications but does not include Recording of the Voice Communications or any part of the Voice Communications.

Monitoring

means Listening to and/or Recording of a Voice Communication.

Personal Information

has the meaning given by the PA.

NOTE: For the purposes of the Guideline, Recordings of Voice Communications should be assumed to be Personal Information even in cases where no names are mentioned, as it will generally be possible to attribute a voice to at least one party from call charge and other records.

Recording

means the copying of all or part of the content of a Voice Communications on any medium.

Stored Communication

has the meaning given by section 5 of the TIAA.

Telecommunications Network

has the meaning given by section 5 of the TIAA.

NOTE: This is "a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both, but does not include a system, or series of systems, for carrying communications solely by means of radiocommunications".

Telecommunications System

has the meaning given by section 5 of the TIAA.

*NOTE: This is "a Telecommunications Network that is:
(a) within Australia; or
(b) partly within Australia, but only to the extent that the network is within Australia;
and includes equipment, a line or other facility that is connected to such a network and is within Australia".*

Voice Communication

means a communication, and any part of a communication, in the form of conversation, other speech, music or other sounds.

2.3 Interpretations

In the Guideline, unless the contrary appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) words in the singular includes the plural and vice versa;
- (d) words importing persons include a body whether corporate, politic or otherwise;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) mentioning anything after include, includes or including does not limit what else might be included;
- (g) words and expressions which are not defined have the meanings given to them in the Act; and
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, agents, assignees and novatees.

3 GUIDELINES FOR MONITORING

3.1 Conduct of Monitoring

The Monitoring of Voice Communications for the purposes of installation, operation or maintenance of a network is permitted in the TIAA as an exception to the prohibition on Interception of a Communication.

Such Monitoring should be conducted in accordance with this Guideline and should have appropriate regard to:

- (a) the confidentiality of the Voice Communications;
- (b) the privacy of any individuals concerned; and
- (c) any internal privacy procedures or applicable industry codes and standards.

3.2 Organisation to develop internal authorisation procedures

Organisations should establish and implement internal procedures to ensure that the Monitoring of Voice Communications is only undertaken with the authorisation of a designated senior member of staff or his/her delegate.

3.3 Listening to Voice Communications

Listening to Voice Communications can be undertaken in the following circumstances:

- (a) to check the status of a line in the course of the installation, operation or maintenance of the network;
- (b) to ensure that connection of or to a telecommunication service has been made or maintained;
- (c) to investigate or monitor the service quality of a telecommunication service, including an international telecommunications service;
- (d) where it occurs in the investigation of a customer complaint relating to installation, operation or maintenance of a Telecommunications System;
- (e) to investigate or monitor network performance; or
- (f) otherwise where it occurs incidentally in the operation, installation and maintenance of the network or in the connection of equipment or a service or a system.

3.4 Duration of Listening to Voice Communications

Listening to Voice Communications should only continue for the minimum period necessary to achieve the objectives of the Listening.

<i>NOTE: This is consistent with the PA.</i>
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3.5 Voice Recording

- 3.5.1 Recording of Voice Communications may be undertaken where it is necessary to assist in the diagnosis or substantiation of faults. Where the customer is readily identifiable, the customer's consent should be obtained (except in the circumstance described in Clause 3.6.3). The Recording should be conducted in accordance with the organisation's internal procedures for Monitoring.

NOTE: If one can identify the customer then the Voice Communication may include 'sensitive information' as defined in the PA. The PA generally requires consent for the collection of sensitive information.

- 3.5.2 Where Voice Communications are recorded, an organisation's internal procedures for Monitoring should comply with the Australian Privacy Principles in the PA governing the collection, use and disclosure of Personal Information.

3.6 Customer consent for Recording

- 3.6.1 Where the customer's consent should be obtained under this Guideline, the Carrier or CSP should obtain the customer's consent prior to any Recording taking place and retain evidence of that consent.

NOTE: A customer's consent could be evidenced by, for example, a copy of the customer's written consent, a recording or notation of the customer's verbal consent or a record of a consent provided by the customer electronically.

- 3.6.2 The customer should be given sufficient information about the proposed Recording to enable the customer to understand:
- (a) why the Recording is necessary; and
 - (b) how any information collected during the course of the Recording may be used.
- 3.6.3 Notwithstanding Clause 3.5.1, but subject to requirements of the PA and the TA, the customer's consent for Recording is not required where:
- (a) obtaining that consent may unreasonably delay, prejudice or hinder the detection or prevention of fraudulent use of the Carrier's or CSP's network(s) for which Recording is to be performed; and
 - (b) the organisation's internal procedures for Monitoring have been complied with.

3.7 Use or disclosure of information

- 3.7.1 Information obtained as a result of Monitoring of Voice Communications should only be used or disclosed as permitted under:
- (a) the TIAA;
 - (b) the TA;
 - (c) the PA; and
 - (d) any internal policies or privacy codes, applicable industry codes and standards.
- 3.7.2 Part 13 of the TA prohibits the use or disclosure of information that relates to the contents or substance of a communication or the affairs or personal particulars of another person and which comes to that person's knowledge in the course of their business and employment, apart from for certain authorised purposes relating, for example, to disclosures to regulators or for law enforcement purposes, as set out in Part 13 of the TA or Chapter 4 of the TIAA.
- 3.7.3 Under Australian Privacy Principle 6 of the PA, organisations must not use or disclose Personal Information about an individual for a purpose other than the primary purpose of collection except in limited circumstances, including where the organisation has gained the consent of the individual. Where Monitoring is undertaken, any records (including any Recording) should only be used for the purpose for which they are made in the first place, or as otherwise authorised or required by law.

3.8 Retention and disposal of recordings

- 3.8.1 Once the purpose for which the Recordings were made has been satisfied, any Recordings should be erased unless:
- (a) the customer has requested that the information be retained;
 - (b) the organization receives legal advice that the information should be retained for reasons directly related to the purpose for which the recordings were made; or
 - (c) retention is otherwise required by law.

3.9 Access controls and physical security

- 3.9.1 Appropriate logical access controls and physical security measures should be implemented in relation both to Interception equipment and recorded data.
- 3.9.2 These controls and measures should be documented and include auditable access trails where appropriate.

4 REFERENCES

Publication	Title
Industry Guidelines	
G516:2014	Participant Monitoring of Voice Communications http://commsalliance.com.au/Documents/all/guidelines/g516
Legislation	
	<i>Criminal Code Act 1995</i> http://www.comlaw.gov.au/Series/C2004A04868
	<i>Privacy Act 1988</i> http://www.comlaw.gov.au/Series/C2004A03712
	<i>Telecommunications Act 1997</i> http://www.comlaw.gov.au/Series/C2004A05145
	<i>Telecommunications (Interception and Access) Act 1979</i> http://www.comlaw.gov.au/Series/C2004A02124

APPENDIX

A PROCEDURES FOR MONITORING OF VOICE COMMUNICATIONS FOR THE PURPOSE OF INSTALLATION, OPERATION OR MAINTENANCE OF A NETWORK

Any information obtained as a result of Monitoring of Voice Communications should only be used or disclosed in accordance with Clause 3.7 of the Guideline. If the Voice Communication is recorded, it should only be retained in accordance with Clauses 3.8 and 3.9 of the Guideline.

Refer to Figure 1 for an informative flowchart of procedures for the monitoring of voice communications.

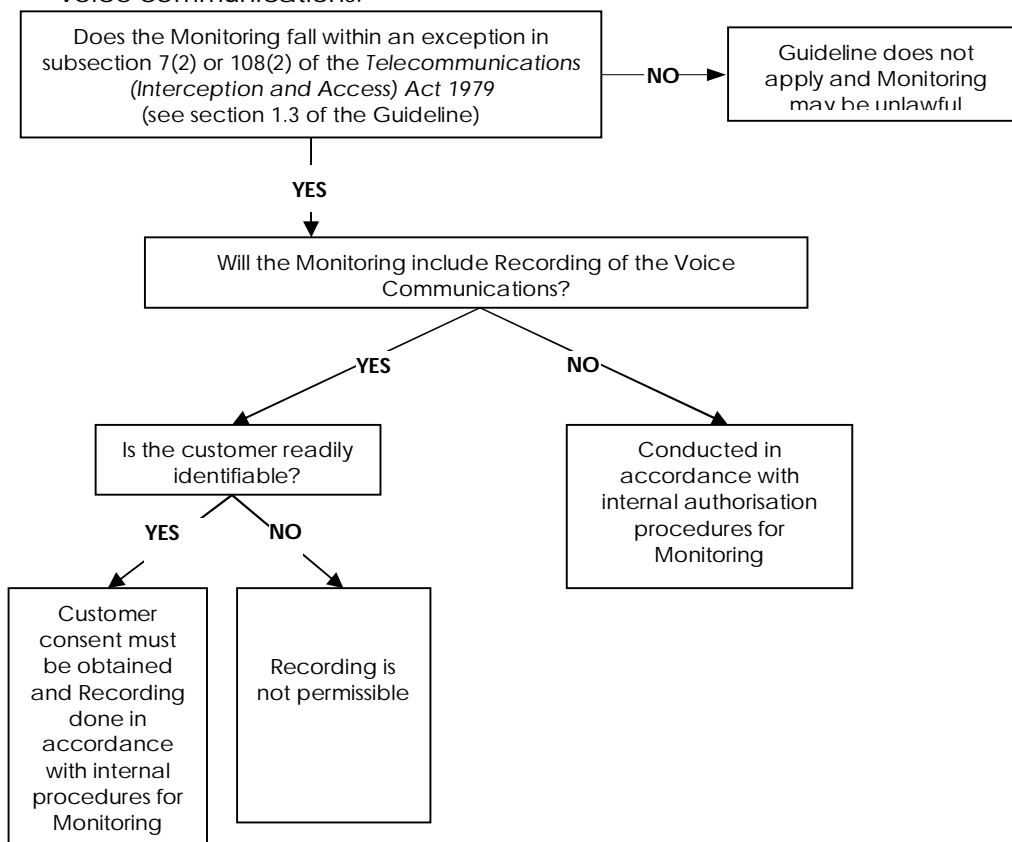


FIGURE 1

Procedures for Monitoring of Voice Communications for the Purpose of Installation, Operation or Maintenance of a Network

PARTICIPANTS

The Working Committee responsible for the revisions made to the Guideline consisted of the following organisations and their representatives:

Organisation	Membership	Representative
AAPT	Voting	George Dionisopoulos
ACCAN	Voting	Jonathan Gadir
Attorney-General's Department	Non-voting	Catherine Smith
Attorney-General's Department	Non-voting	Kathryn Ovington
Attorney-General's Department	Non-voting	Sonia Harris
Australian Privacy Foundation	Voting	Nigel Waters
NBN Co	Voting	Peter Bull
Optus	Voting	David Bolton
Telstra	Voting	Dan Mandaru

This Working Committee was chaired by James Duck of Communications Alliance who also provided project management support.

Communications Alliance was formed in 2006 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services.

In pursuing its goals, Communications Alliance offers a forum for the industry to make coherent and constructive contributions to policy development and debate.

Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

It is committed to the achievement of the policy objective of the *Telecommunications Act 1997* - the greatest practicable use of industry self-regulation without imposing undue financial and administrative burdens on industry.



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COMMUNICATIONS
ALLIANCE LTD**

**Level 12
75 Miller Street
North Sydney
NSW 2060 Australia**

**Correspondence
PO Box 444
Milsons Point
NSW 1565**

**T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507**

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